

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATHAN F.

Claimant,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. N 2006051020

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 11, 2006, in Campbell, California.

Marilyn Maggio, a professional advocate, represented Claimant Nathan F., whose father also attended the hearing.

Jacques Maitre, Director's Designee for Fair Hearings, represented service agency San Andreas Regional Center (SARC).

The record closed on July 11, 2006.

ISSUE

Whether SARC is required to continue to fund applied behavior analysis (ABA) services, speech therapy and/or occupational therapy for Claimant.

FACTUAL FINDINGS

1. Claimant was born on November 8, 2002, and is currently about three and one-half years old. He has been diagnosed with autism. Claimant received Early Intervention Services Act (Early Start) services as an infant through SARC. Early Start services cease when a child turns three years old – at age three, a child may be eligible for special education services through his local school district and/or for services pursuant to the Lanterman Act from his local regional center. Claimant was found eligible for both. Hence,

he is entitled to special education from the San Jose Unified School District (SJUSD) and to services from SARC.

2. SJUSD began to work with Claimant's parents to develop an Individualized Education Plan (IEP) prior to his third birthday. The first IEP is dated October 26, 2005, and contains language acknowledging that Claimant is entitled to speech and language services and occupational therapy. It also refers to an assessment regarding Claimant's need for ABA services. In addition, SARC began to work with Claimant's parents to develop an Individual Program Plan (IPP) to provide services authorized by the Lanterman Act.

3. A dispute arose between Claimant's parents and SJUSD regarding the details of the provision of education services. Claimant filed for a due process hearing and that matter remains pending. In light of the dispute, and with concern about Claimant's well-being in the interim, SARC agreed to continue funding services it had been funding through the Early Start Program. The agreement is in the form of an Informal Meeting Decision as Claimant had requested a fair hearing after receiving SARC's notice that it would no longer fund educational services after Claimant turned age three.

4. In pertinent part, the Informal Meeting Decision, dated January 18, 2006, states:

Should the school district begin providing ABA and or speech therapy prior to March 17, 2006, regional center funding for the affected service(s) will cease on the date the school district begins funding.

Should the pending due process and mediation with the school district still be unresolved as of March 17, 2006, the regional center shall enter into another time-limited agreement to continue ABA and speech therapy funding.

The agreement stated very clearly, however, that SARC had no legal obligation to continue the funding. It quotes provisions in the Lanterman Act that disallow funding for services available through generic resources and requires services to be provided in a cost-effective manner. In summary, it states:

Since the regional center holds that all the services in question are educational in nature . . . the regional center accepts no responsibility to fund ABA or speech therapy after the resolution of [Claimant's] current IEP dispute.

5. An IEP team meeting was held at SJUSD on March 6, 2006. Those present included two SARC representatives. At the meeting, SJUSD offered ABA and speech and

language services to Claimant equivalent to what SARC had been providing.¹ Accordingly, by letter dated March 30, 2006, SARC noticed Claimant that it would provide “an additional two weeks of service, through April 14, 2006, to allow” the finalization of the terms of provision. Then, funding would cease. In addition, SARC sent an email message to Claimant’s advocate stating that the service would “be reauthorized until Friday, April 14th, after which a decision will be made regarding continuation of funding ABA and OT services.”

6. Claimant disagreed with SARC’s decision to cease funding, filed a fair hearing request and this hearing followed. Claimant contends that the District’s offer to provide services is not the provision of the services, and that SARC should be bound to provide the services until the dispute is fully resolved. Further, Claimant argues that, separate and apart from the agreement, SARC should provide the services pursuant to the Lanterman Act. SARC contends that the Lanterman Act does not allow regional centers to provide educational services; that the services were provided as a courtesy on a time-limited basis, and that the District’s offer relieves SARC from any obligation it had to continue to fund.

APPLICABLE LAW

1. The purpose of the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4501 et seq.):

is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community. *Association for Retarded Citizens v. The Department of Developmental Services* (1985) 38 Cal.3d 384, 388.

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. However, the Act directs the Department, in turn, to provide the services through agencies located in the communities where the clients reside. Specifically:

the state shall contract with appropriate agencies to provide fixed points of contact in the community. . . . Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers. (Welf. & Inst. Code § 4620.)

¹ An extensive email message from Claimant’s advocate to SJUSD’s attorney dated April 18, 2006, confirms that ABA services, speech and language services and occupational therapy had all been offered by SJUSD and accepted, with some details to be worked out, by Claimant’s father.

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. Once an IPP is in place:

A regional center may. . . purchase service. . . from an individual or agency which the regional center and consumer. . . or parents. . . determines will best accomplish all or any part of that [IPP]. (Welf. & Inst. Code § 4648, subd. (a)(3).)

4. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible.” (Welf. & Inst. Code § 4640.7, subd. (b).) To duplicate a service already available to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are enjoined not to supplant the budget of any agency that has a legal responsibility to serve the general public and that receives public funds for providing those services. (Welf. & Inst. Code § 4648, subd. (a)(8).) There is no doubt that school districts are such agencies.

DISCUSSION

The law and the evidence support SARC’s decision to cease to fund ABA services, speech therapy and occupational therapy for Claimant. Claimant is over age three and is entitled to educational services from SJUSD. All three services are educational services and SJUSD has offered to provide them. SARC’s decision to provide funding temporarily does not require SARC to continue to provide funding until Claimant and SJUSD have come to agreement on every detail of the services or completed a due process case. To continue to provide the educational services would violate the Lanterman Act’s provision against supplanting generic resources.

ORDER

Claimant Nathan F.’s appeal is denied. SARC is not required to fund ABA services, speech therapy and/or occupational therapy for Claimant.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.